

Memorandum



Date: October 7, 2014

To: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

Agenda Item No. 8(A)(1)

From: Carlos A. Gimenez
County Mayor

A handwritten signature in dark ink, likely belonging to Carlos A. Gimenez, the County Mayor.

Subject: Award Recommendation for Financial Feasibility Consultant Services for the Miami-Dade Aviation Department, RFQ No. MDAD-14-01, in the amount of \$6,015,000.00

RECOMMENDATION

It is recommended that the Board of County Commissioners (Board) approve the award of a Non-Exclusive Professional Services Agreement for Financial Feasibility Consultant Services for the Miami-Dade Aviation Department (MDAD) to LeighFisher Inc., in the amount of \$6,015,000.00 and authorize the Mayor or designee to execute the Agreement attached hereto and exercise any cancellation, termination or renewal provisions contained therein.

SCOPE

The impact of this agenda item is Countywide in nature as it relates to all MDAD airports.

DELEGATED AUTHORITY

In accordance with Miami-Dade County Code Section 2-8-3 related to identifying delegation of Board authority contained within the subject Agreement, the Aviation Director or designee has the authority to exercise the renewal options and to terminate the Agreement.

FISCAL IMPACT/FUNDING SOURCE

The total amount of the Agreement shall not exceed \$6,015,000.00 which includes compensation of \$6,000,000 for services and reimbursable expenses and \$15,000 to the Inspector General account. The source of funding is the MDAD Operating Budget and bond proceeds.

TRACK RECORD/MONITOR

LeighFisher has performed in a satisfactory manner on the existing contract. Chief Financial Officer Anne S. Lee is responsible for monitoring this contract.

DUE DILIGENCE

Pursuant to Resolution No. 187-12, due diligence was conducted to determine contractor responsibility; including verifying corporate status and that there are no performance or compliance issues. The lists that were reviewed include: convicted vendors, debarred vendors, delinquent contractors, suspended vendors, and federal excluded parties as well as the County's Small Business Development database. There were no adverse findings relating to contractor responsibility.

BACKGROUND

On April 21, 2014, MDAD advertised Request for Qualifications No. MDAD-14-01 for a consultant to provide financial feasibility consulting services. The firm LeighFisher was the sole respondent to the advertisement.

The Evaluation/Selection Committee met and reviewed the Qualification Statement submitted by LeighFisher and recommended negotiations with the company based on its written Qualification

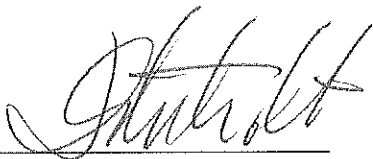
Statement. The Negotiation Committee appointed by the Mayor successfully completed an agreement with LeighFisher.

The financial feasibility consultant studies, analyzes and reports on financial matters, passenger traffic counts, and demographic aspects pertaining to issuance of aviation revenue bonds. The consultant also refreshes forecasts for traffic, revenues and expenditures; evaluates the ability of MDAD to generate revenues sufficient to satisfy debt service; and recommends rates and charges for the County's airport system to meet the rate covenant of the Amended and Restated Trust Agreement. The Trust Agreement requires MDAD to have an independent firm perform said services and requires approval of the selected independent firm from the trustee, The Bank of New York Mellon, and the co-trustee, U.S. Bank National Association.

PROJECT:	Financial Feasibility Consultant Services
PROJECT NO.:	RFQ No. MDAD-14-01
PROJECT LOCATION:	All County Airports
COMPANY NAME:	LeighFisher Inc.
TERM OF AGREEMENT:	Five (5) years
OPTION(S) TO RENEW:	Three (3) one-year terms at the County's sole discretion
AMOUNT OF AGREEMENT:	\$6,015,000.00 which includes compensation for services, reimbursable expenses and the Inspector General audit account.
GENDER, ETHNICITY & OWNERSHIP BREAKDOWN:	LeighFisher Inc. is a wholly owned subsidiary of Jacobs Engineering Group Inc.
COMPANY LOCATION:	555 Airport Blvd, Suite 300 Burlingame, CA 94010
HOW LONG IN BUSINESS:	68 years
PREVIOUS AGREEMENTS WITH THE COUNTY WITHIN THE PAST FIVE (5) YEARS:	One (1) Agreement totaling \$5,000,000.00
CONTRACT MEASURE:	20% Small Business Enterprise (SBE) goal
CONTRACT MEASURE ACHIEVED:	20% SBE goal (\$1,200,000.00)
SBE SUBCONSULTANTS:	A.L. Jackson & Company – 15% (\$900,000.00) Strategic Information Analysis, Inc. – 5% (\$300,000.00)

Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners
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ADVERTISEMENT DATE: April 21, 2014
LIVING WAGE: N/A
USING DEPARTMENT: Miami-Dade Aviation Department.

A handwritten signature in dark ink, appearing to read "J. Osterholt", written over a horizontal line.

Jack Osterholt, Deputy Mayor




MEMORANDUM

(Revised)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: October 7, 2014

FROM: 
R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 8(A) (1)

Please note any items checked.

- ☐ "3-Day Rule" for committees applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Ordinance creating a new board requires detailed County Mayor's report for public hearing
- ☐ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- ☒ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(A)(1)

10-7-14

RESOLUTION NO. _____

RESOLUTION APPROVING PROFESSIONAL SERVICES AGREEMENT BETWEEN MIAMI-DADE COUNTY AND LEIGHFISHER INC., FOR FINANCIAL FEASIBILITY CONSULTANT SERVICES FOR THE MIAMI-DADE AVIATION DEPARTMENT, RFQ NO. MDAD-14-01; IN AN AMOUNT NOT TO EXCEED \$6,015,000.00; AND AUTHORIZING COUNTY MAYOR OR DESIGNEE TO EXECUTE THE AGREEMENT AND TO EXERCISE THE RENEWAL, TERMINATION AND CANCELLATION PROVISIONS CONTAINED THEREIN

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum and documents, copies of which are incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves the Professional Services Agreement between Miami-Dade County and LeighFisher Inc. for Financial Feasibility Consultant Services for the Miami-Dade Aviation Department, RFQ No. MDAD-14-01, in substantially the form attached hereto, in an amount not to exceed \$6,015,000.00, and for a term of five (5) years, exclusive of options to renew; and authorizes the County Mayor or designee to exercise the three one (1) year extension periods as provided for in the Agreement, and to otherwise exercise the termination and cancellation provisions therein, and to enforce and administer all provisions thereof.

The foregoing resolution was offered by Commissioner
who moved its adoption. The motion was seconded by Commissioner
and upon being put to a vote, the vote was as follows:

Rebeca Sosa, Chairwoman

Lynda Bell, Vice Chair

Bruno A. Barreiro

Jose "Pepe" Diaz

Sally A. Heyman

Jean Monestime

Sen. Javier D. Souto

Juan C. Zapata

Esteban L. Bovo, Jr.

Audrey M. Edmonson

Barbara J. Jordan

Dennis C. Moss

Xavier L. Suarez

The Chairperson thereupon declared the resolution duly passed and adopted this 7th day of October, 2014. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.



David M. Murray



**NON-EXCLUSIVE PROFESSIONAL SERVICES AGREEMENT
FOR FINANCIAL FEASIBILITY CONSULTANT SERVICES
FOR MIAMI-DADE AVIATION DEPARTMENT**

This AGREEMENT made as of the _____ day of _____ in the year 201__ between

the County:

Miami-Dade County Florida, a political subdivision of the State of Florida, acting by and through its **Board of County Commissioners**, hereinafter called the "County", which shall include its officials, successors, legal representatives, and assigns.

and the Consultant:

LeighFisher Inc.
555 Airport Blvd., Suite 300
Burlingame, CA 94010

which term shall include its officials, successors, legal representatives, and assigns.

SECTION 5.0 - AGREEMENT

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ATTACHMENTS:

- EXHIBIT 1 – Consultant Invoicing Guidelines (Method and Time of Payment)
- EXHIBIT 2 – Schedule of Hourly Rates (to be negotiated with Successful Respondent)
- EXHIBIT 3 – General Conditions regarding Financial Studies Public Offerings
- EXHIBIT 4 – Subcontractor Payment Report
- EXHIBIT 5 – Miami-Dade County Small Business Enterprise Program
Implementing Order 3-41, SBD Worksheet and Consultant's
Executed Schedule(s) of Intent
- EXHIBIT 6 – First Source Hiring Referral Program, Implementing Order 3-58,
- EXHIBIT 7 – Consultant's Executed affidavits (inserted for Successful Respondent)
- EXHIBIT 8 - Certificate(s) of Insurance (inserted for Successful Respondent)

**NON-EXCLUSIVE PROFESSIONAL SERVICES AGREEMENT
FOR FINANCIAL FEASIBILITY CONSULTANT SERVICES
FOR MIAMI-DADE AVIATION DEPARTMENT**

This Non-Exclusive Professional Services Agreement (the "Agreement") is made this _____ day of _____, 201_ by and between **MIAMI-DADE COUNTY** (the "County"), a political subdivision of the State of Florida, by and through its Board of County Commissioners (the "Board"), and _____ (the "**Consultant**"), authorized to do business in the State of Florida (collectively, the "Parties").

WHEREAS, the County as owner and operator of Miami International Airport ("MIA" or the "Airport") through its Miami-Dade Aviation Department ("MDAD" or the "Department"), needs professional financial feasibility consulting services; and

WHEREAS, the Consultant offers to provide said consulting services in a manner that shall conform to (i) the scope of services delineated in the County's Request for Qualifications ("RFQ") No. MDAD-14-01 and all associated addenda, incorporated herein by reference, and (ii) the requirements of this Agreement; and

NOW THEREFORE, in consideration of the Agreement, and the mutual covenants herein contained, the Parties agree as follows:

ARTICLE 1 - DEFINITIONS

The following words and expressions used in this solicitation shall be construed as follows, except when it is clear from the context that another meaning is intended:

- a) The terms "Agreement" or "Contract" shall mean this Agreement including (i) all contract terms and conditions; (ii) Consultant's Qualification Statement, and (iii) all appendices, attachments, exhibits and amendments thereto entered into by the County and the Consultant.
- b) The term "Airport" shall mean Miami International Airport.
- c) The term "Airport System" shall mean Miami International Airport, Opa-locka Executive Airport, Kendall-Tamiami Executive Airport, Homestead General Aviation Airport, Dade-Collier Training and Transition Airport and Opa-locka West Airport (decommissioned).
- d) The term "Article" shall mean the article section contained in this Agreement.
- e) The terms "Aviation Director or Director" shall mean the Director of the Miami-Dade Aviation Department or his/her designee.

- f) The term "Board" shall mean the Board of County Commissioners of Miami-Dade County, Florida.
- g) The term "Code" shall mean the Code of Miami-Dade County, Florida.
- h) The terms "Consultant" or "Contractor" or "Selected Proposer/Respondent" shall mean the Proposer/Respondent that receives an award of an Agreement from the County as a result of the Solicitation.
- i) The term "County" shall mean Miami-Dade County, a political subdivision of the State of Florida.
- j) The term "Date of Execution" shall mean the day upon which the Agreement is executed by the Mayor of Miami-Dade County or designee and attestation by the Clerk.
- k) The term "Days" shall mean calendar days, unless specifically stated otherwise.
- l) The term "Deliverables" shall mean all documentation and any items of any nature submitted by the Consultant to the County's Project Manager for review and approval pursuant to the terms of this Agreement.
- m) The term "Department" or "MDAD" shall mean the Miami-Dade Aviation Department.
- n) The term "Effective Date" shall mean the tenth (10th) business day after the date of execution by the Mayor and attestation by the Clerk of the Board of this Agreement.
- o) The term "Project Manager" shall mean the person that is assigned to oversee the project or his or her designee. The Project Manager's responsibilities are to coordinate and communicate with the Consultant and to manage and supervise execution and completion of the Scope of Services and the terms and conditions of this Agreement. All parties may rely on the instructions or determinations made by the Project Manager; provided, however, that such instructions and determinations do not change the Scope of Services or modify the terms and conditions of this Agreement. The County shall from time to time provide written notice to the Consultant designating the Project Manager.
- p) The term "Report(s)" shall mean all documentation concerning the Services offered by the Consultant concerning Consultant's performance in meeting the requirements of this Agreement.
- q) The term "Scope of Services" shall mean all services, work, and actions by the Consultant performed pursuant to Article 3 of this Agreement.
- r) The terms "Service Order or Work Order" shall mean a written order signed by the Director, or his designee, directing the Consultant to perform or modify the performance of such Services.

- s) The terms "shall", "should", and "will" shall mean that objectives and tasks are required to be met or performed by the Consultant.
- t) The term "Sub-Article" shall mean the subarticle section contained in this Agreement.
- u) The terms "Subconsultant" or "Subcontractor" shall mean any person, firm, entity, or organization, other than the employees of the Consultant, who contracts with the Consultant to furnish labor, or labor and materials, in connection with the Work or Services to the County, whether directly or indirectly, on behalf of the Consultant.
- v) The terms "Work", "Services", "Program", "Project", or "Engagement" shall mean all matters, and items, required of the Consultant in accordance with the provisions of this Agreement.

ARTICLE 2 – TERM

The term of the Agreement shall be five (5) years, shall begin upon execution by the parties and shall be in effect until all Services are completed or until those Services Orders in force at the end of the stated period of time have been completed and the Services accepted, whichever may be later. The Department, at its sole discretion, reserves the right to renew the Agreement for three (3) additional one-year periods.

Nothing in this Article shall prevent the County from exercising its rights to terminate the Agreement as provided elsewhere herein.

ARTICLE 3 – SCOPE OF SERVICES

3.01 The Consultant's services shall include those required of the Traffic Engineer under the Trust Agreement in connection with the issuance of bonds under the Trust Agreement. Those services are generally described as:

1. Evaluating the ability of the Department to generate revenues sufficient to satisfy debt service coverage requirements, which involves:
 - a) Analyzing the economic base (Latin America and South Florida) for air transportation at the Airport.
 - b) Forecasting international and domestic passenger and cargo traffic at MIA.
 - c) Forecasting revenues and expenditures at MIA.

Such evaluation shall be in the form of: 1) a financial feasibility report, suitable for inclusion in the Preliminary Official Statement and the Official Statement of a debt issuance; and 2) a certification or other documentation demonstrating compliance with the additional bonds test required by the Trust Agreement.

2. Participating in review of the Preliminary Official Statement and the Official Statement and related documents, for each bond issue.

3. Participating in investment rating agency, credit insurer, and investor presentations and responding to inquiries by such groups.
4. Evaluating rate covenant compliance and rents, fees, and charges for Port Authority Properties ("PAP") facilities and services.
5. Recommending rents, fees, and charges for the Airport System, in conjunction with each debt issuance.
6. Evaluating the financial impact of facilities constructed with Airport revenues other than bonds issued under the Trust Agreement, to determine whether the Department still satisfies its debt services coverage requirements.
7. Evaluating the financial impact of facilities constructed with County revenues and turned over to the Department, to determine whether the Department satisfies its debt services coverage requirements.
8. Provide services which include but are not limited to financial analyses as described below:
 - ❖ Trustee issues (as per Section 708 of the Trust Agreement).
 - ❖ Plan of finance preparation.
 - ❖ Preliminary Official Statement preparation.
 - ❖ Airline rates and charges calculations.
 - ❖ Airline lease agreement or Miami Airport Affairs Committee ("MAAC") issues.
 - ❖ Passenger Facility Charge ("PFC") revenue program.
 - ❖ Annual operating budget assistance.
 - ❖ Monitoring MDAD's cash balances.
 - ❖ Performance sub-account assistance.
 - ❖ Rating agency update assistance.
 - ❖ CIP financial projections.
9. Other financial analyses as necessary to support compliance with debt covenants.

ARTICLE 4 – COMPENSATION

4.01 COMPENSATION FOR SERVICES AND REIMBURSABLE EXPENSES

Except as otherwise provided for herein, the fee for all services, including reimbursable expenses, shall not exceed **Six Million Dollars (\$6,000,000.00)** for the Term of the Agreement, as well as any options to renew that may be exercised by the Department.

As compensation for the provision of services and only if authorized by Department Service Order(s), the County shall pay the Consultant the fees specified in the Service Order(s) issued. Said fees shall be in accordance with Exhibit 2 "Schedule of Hourly Rates" and Exhibit 1 "Consultant Invoicing Guidelines".

The County shall have no obligation to issue any Service Order(s). All invoices for services rendered on a time and materials basis must be accompanied by personnel time records satisfactory to the Department. The Consultant will not be compensated for travel time outside of normal business hours (8 a.m. to 5 p.m., Monday through Friday).

After the first three (3) years of this Agreement, the Department may, by authorized Service Order only, adjust the rates of compensation for personnel in Exhibit 2 "Schedule of Hourly Rates" by the lower of either the percentage increase in the Consumer Price Index (CPI) for the Miami urban area or the cost of living adjustment for the County non-union bargaining unit; provided, however, the cumulative increase for the term of the Agreement including extensions shall not exceed an aggregate total of ten percent (10%).

Reimbursable expenses incurred by the Consultant shall be reimbursed upon prior written authorization from the Department, as part of such Service Order. Payments to the Consultant shall be reimbursed without any Consultant or Subconsultant mark-up of the expenses, and must be approved by the Department. Disputed items will be presented to the Consultant in accordance with the Florida Prompt Payment Act. The following items, subject to the conditions below, constitute reimbursable expenses:

- A. All photographic, printing, and reproduction cost, when applicable, will be reimbursed at the same rates paid by the County to its vendors.
- B. Travel expenses, in accordance with the Miami-Dade County Administrative Order No. 6-1 and applicable Florida Statutes.
- C. Itemized long distance telephone and data costs, directly attributable to and identified as applicable to the Work of the Consultant.
- E. Parking fees while in Miami only while conducting business for the County under this Agreement.

The Department reserves the right to have the Consultant produce documentary support that said reimbursement is applicable to specific Work.

4.02 INVOICES AND METHOD OF PAYMENT

The Consultant shall submit, to the Project Manager one (1) original and two (2) copies of duly certified invoice(s) for payments due for the portion(s) of Services performed and eligible for payment under the terms of this Agreement. Invoices must be accompanied by (i) copy(ies) of applicable Service Order(s), (ii) documentation of personnel time, and (iii) original receipts for reimbursable expenses, as appropriate. The Project Manager may request other supporting documentation reasonably required to support the processing of payments. All payments shall be governed by the provisions of the Florida Prompt Payment Act.

4.03 ACCOUNTING RECORDS AND AUDIT PROVISIONS

The County reserves the right to audit the accounts and records of the Consultant supporting all payments for Services hereunder and all reimbursable expenses including, but not limited to, payroll records and federal tax returns. The County shall have unrestricted access to all of the Consultant's books and records that pertains to the Consultant's operation under this Agreement. In addition, the County shall have the unrestricted right to audit, either by County staff or an audit firm chosen by the County. Such audit may take place during reasonable business hours for the period of the performance of this Agreement and for three (3) years after final payment under this Agreement. The Consultant shall maintain, as part of its regular accounting system, records of a nature and in a sufficient degree or detail to enable such audit to determine the personnel hours and personnel costs and other expenses associated with the Agreement. It is further agreed that said compensation provided for in this Agreement shall be adjusted to exclude any significant costs where the County determines that the payment for Services was increased due to inaccurate, incomplete or non-current wage rates or other factual unit costs. All such adjustments in compensation paid or payable to Consultant under this Agreement shall be made within three (3) years from the date of final billing or acceptance of the Services by the County, whichever is later. The Consultant shall pay for all audit-related expenses where the audit findings aggregate to greater than or equal to three percent (3%) of the correct amount the County should have paid or been invoiced. The three percent (3%) audit-related expense threshold only applies to the amount(s) audited, and not all of the Consultant's billings. Any overpayment amount(s) discovered by audit shall be reimbursed to the County within fifteen (15) day of notice of the audit results to the Consultant.

4.04 SUBCONTRACTORS PAYMENT REPORT

In accordance with Section 2-8.8 of the County Code (as amended by Ordinance No. 11-90), an entity contracting with the County as a condition of final payment under a contract, the Consultant/Contractor shall identify all subconsultants/subcontractors used in the work, the amount of each subcontract, and the amount paid to each subconsultant/subcontractor. In the event that the Consultant/Contractor intends to pay less than the subcontract amount, the Consultant/Contractor shall deliver to the County a statement explaining the discrepancy or any disputed amount in the attached Exhibit 4.

ARTICLE 5 - INDEMNIFICATION AND HOLD HARMLESS

The Consultant shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorney's fees and cost of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of the Agreement by the contractor or its employees, agents, servants, partners, or principals or subcontractors/subconsultants. The Consultant shall pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where

applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The Consultant expressly understands and agrees that any insurance protection required by the Agreement or otherwise provided by Consultants shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

ARTICLE 6 – NONDISCRIMINATION

6.01 EQUAL EMPLOYMENT OPPORTUNITY

The Consultant shall neither discriminate against any employee or applicant for employment because of age, sex, race, color, religion, marital status, place of birth or national origin, ancestry, nor in accordance with the Americans with Disabilities Act (42 U.S.C. § 12101), discriminate against any otherwise qualified employees or applicants for employment with disabilities who can perform the essential functions of the job with or without reasonable accommodation. The Consultant shall take affirmative actions to ensure that applicants are employed and that employees are treated during their employment without regard to age, sex, race, color, religion, marital status, place of birth or national origin, ancestry, or disability. Such actions include, but are not limited to, the following: employment, upgrading, transfer or demotion, recruitment, recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeships.

The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the County setting forth the provisions of this Equal Employment Opportunity clause. The Consultant shall comply with all applicable provisions of the Civil Rights Act of 1964, Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375, revised Order No. 4 of December 1, 1971, as amended, the Americans with Disabilities Act, the Age Discrimination in Employment Act effective June 12, 1968, the rules, regulations and relevant orders of the Secretary of Labor, Florida Statutes §§ 112.041, 112.042, and 112.043, and Miami-Dade County Ordinance No. 75-46, Articles 3 and 4.

6.02 NONDISCRIMINATION

During the performance of this Agreement, the Consultant agrees as follows:

The Consultant shall, in all solicitations or advertisements for employees placed by or behalf of the Consultant, state that all qualified applicants shall receive consideration for employment without regard to age, sex, race, color, religion, marital status, place of birth or national origin, ancestry, physical handicap or disability. The Consultant shall furnish all information and Reports required by Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to Consultant's books, records, accounts by the County and Compliance Review Agencies for purposes of investigation to ascertain the compliance with such rules, regulations, and orders. In the event of the Consultant's noncompliance with the nondiscrimination clauses of this

Agreement or with any of the said rules, regulations, and orders, this Agreement may be cancelled, terminated, or suspended in whole or in part in accordance with Sub-Article 13.05 hereof and the Consultant may be declared ineligible for further contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 and such sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 as amended or by rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

The Consultant shall include Sub-Article 6.01 above in all Consultant subcontracts in excess of \$10,000, unless exempted by the rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375, so that such provisions shall be binding upon each Sub-consultant.

6.03 DISABILITY NONDISCRIMINATION CERTIFICATION

By entering into this Agreement with the County and signing the Disability Nondiscrimination Certification, the Consultant attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related acts) or Miami-Dade County Resolution No. R-385-95. If the Consultant or any owner, subsidiary or other firm affiliated with or related to the Consultant is found by the responsible enforcement officer, courts, or the County to be in violation of the act or the resolution, such violation shall render this Agreement terminable in accordance with the Sub-Article 13.05 hereof. This Agreement shall be void if the Consultant submits a false certification pursuant to this resolution or the Consultant violated the act or the resolution during the term of this Agreement, even if the Consultant was not in violation at the time it submitted its affidavit.

6.04 BREACH OF NONDISCRIMINATION COVENANT

In the event it has been determined that the Consultant has breached any enforceable nondiscrimination covenant contained in Sub-Article 6.01 above, pursuant to the complaint procedures contained in the applicable federal regulations, and the Consultant fails to comply with the sanctions and/or remedies which have been prescribed, the County shall have the right to terminate this Agreement pursuant to the Sub-Article 13.05 hereof.

6.05 NON-DISCRIMINATORY ACCESS TO PREMISES AND SERVICES

Contractor, for itself, its personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, creed, color, sex, national origin, age, disability or ancestry shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises; (2) that Contractor shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended; (3) the Contractor shall use the premises in

compliance with all other requirements imposed by or pursuant to the enforceable regulations of the Department of Transportation as amended from time to time; and (4) the Contractor shall obligate their Subcontractors and sub-consultants to the same nondiscrimination requirements imposed on the Contractor and assure said requirements are included in those sub-agreements.

ARTICLE 7 – AFFIRMATIVE ACTION

7.01 AFFIRMATIVE ACTION REQUIREMENTS

In accordance with the requirements of Section 2-8.1.5 of the Code of Miami-Dade County, all firms with annual gross revenues in excess of \$5 million seeking to contract with Miami-Dade County shall, as a condition of award, have a written Affirmative Action Plan and Procurement Policy on file with the County's Small Business Development ("SBD") Division. Said firms must also submit, as a part of their submission to be filed with the Clerk of the Board (the "Clerk"), an appropriately completed and signed Affirmative Action Plan/Procurement Policy Affidavit.

Firms whose Boards of Director are representative of the population make-up of the nation are exempted from this requirement and must submit, in writing, a detailed listing of their Boards of Directors, showing the race or ethnicity of each board member, to SBD. Firms claiming exemption must submit, as part of their proposal/bids to be filed with the Clerk, an appropriately completed and signed Exemption Affidavit in accordance with Section 2-8.1.5 of the Code of Miami-Dade County. These submittals shall be subject to periodic review to assure that the entities do not discriminate in their employment and procurement practices against minorities and women/owned businesses.

It shall be the responsibility of each firm to provide verification of their gross annual revenues to determine the requirement for compliance with the ordinance. Those firms that do not exceed \$5 million annual gross revenues must clearly state so in their submission.

7.02 CONTRACT MEASURES

This contract includes participation provisions for Miami-Dade County Small Business Enterprises (SBEs), as follows:

Measure	Program
20% goal	SBE

The participating SBE firms (or joint ventures) must maintain a valid Miami-Dade County SBE certification throughout the duration of this agreement, as well as, meet all other requirements as stipulated in **Exhibit 5**.

ARTICLE 8 – INSURANCE

The Consultant shall furnish to Miami-Dade Aviation Department, c/o Risk Management Division, 4200 NW 36th Street, Miami, Florida 33122 or P. O. Box 025504 Miami, Florida 33102-5504, Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

The Consultant shall maintain the following insurance throughout the performance of this Agreement until the Work has been completed by the Consultant and accepted by the Department.

The Consultant shall not be issued any Service Order under this Agreement until the insurance required hereunder has been obtained and the Miami-Dade Aviation Department has accepted such insurance.

- A. **Worker's Compensation**, as required by Chapter 440, Florida Statutes.
- B. **Commercial General Liability Insurance** on a comprehensive basis including Contractual Liability, in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage. **Miami-Dade County must be shown as an additional insured with respect to this coverage.**
- C. **Automobile Liability Insurance**, covering all owned, non-owned and hired vehicles used in connection with the work in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage.

Note: Under no circumstances is the Contractor permitted on the airfield operations area ("AOA") side of the Airport without increasing the automobile coverage to \$5,000,000 combined single limit.
- D. **Professional (Errors and Omissions) Liability Insurance** in an amount not less than \$500,000 per claim with a deductible not to exceed 10% of the limit of liability.

The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operation of the Consultant.

All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida with the following qualifications:

The company must be rated no less than "A-" as to financial strength and no less than Class "VII" as to financial size, according to the latest edition of Best's Key Rating Guide published by A.M. Best Company, or its equivalent, subject to approval of the MDAD's Risk Management Division.

Prior to the commencement of operations hereunder, and annually thereafter, the Consultant shall furnish certificates of insurance to Miami-Dade County Aviation Department Risk Management which certificates shall clearly indicate: (1) that the Consultant has obtained insurance in the type, amount and classifications as required for strict compliance with this section; that Miami-Dade County is named as an Additional Insured with respect to the Commercial General Liability coverage.

Compliance with the foregoing requirements shall not relieve the Consultant of this liability and obligation under this section or under any other section in this Agreement.

The County reserves the right to require the Consultant to provide such reasonably amended insurance coverage as it deems necessary or desirable upon issuance of notice in writing to the Consultant, which notice shall automatically amend this agreement effective thirty days after such notice.

The Consultant shall be responsible for assuring that the insurance certificates required in conjunction with this section remain in force for the duration of the contractual period of this Agreement, including any and all option years or extension periods that may be granted by the County. If insurance certificates are scheduled to expire during the Agreement period, the Consultant shall be responsible for submitting new or renewed insurance certificates to the Miami-Dade Aviation Department at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the contractual period, the Miami-Dade Aviation Department shall suspend this Agreement until such time as the new or renewed certificates are received by the Miami-Dade Aviation Department in the manner prescribed herein; provided, however, that this suspended period does not exceed thirty (30) calendar days. Thereafter, the Miami-Dade Aviation Department may, at its sole discretion, terminate this Agreement.

Right to Examine: The Miami-Dade Aviation Department reserves the right, upon reasonable notice, to examine the original or true copies of policies of insurance (including but not limited to binders, amendments, exclusions, riders and applications) to determine the true extent of coverage. The Consultant agrees to permit such inspection at the offices of the Miami-Dade Aviation Department.

Compliance: Compliance with the requirements of this article shall not relieve the Consultant of its liability under any other portion of this Agreement or any other agreement between the County and the Consultant.

ARTICLE 9 – RULES, REGULATIONS AND PERMITS

9.01 RULES AND REGULATIONS

The Consultant, shall comply with: (i) the ordinances of the County including the rules and regulations of the Department; (ii) Chapter 25 of the Code; (iii) operational directives issued hereunder; (iv) all additional laws, statutes, ordinances, regulations and rules of the federal, state and local governments, and any and all plans and programs developed in compliance therewith; (v) any County administrative orders, implementing orders and resolutions of the Board of County Commissioners which may be applicable to its operations or activities under this Agreement; (vi) federal air and safety laws and regulations; and (vii) federal, state, and County environmental, hazardous wastes and materials, and natural resources laws and regulations.

9.02 VIOLATIONS OF RULES AND REGULATIONS

The Consultant represents and agrees to pay on behalf of the County any penalty, assessment or fine, issued against the County, or to defend in the name of the County any claim, assessment or civil action, which may be presented or initiated by any agency or officer of the federal, state or local governments, based in whole or substantial part upon a claim or allegation that the Consultant, its agents, employees, consultants, Subconsultants, suppliers, or invitees, have violated any law, statute, ordinance, regulation or rule described in Sub-Article 9.01 above or any plan or program developed in compliance therewith. The Consultant further represents and agrees that the substance of this Sub-Article 9.01 and Sub-Article 9.02 shall be included in every contract and other agreements, which the Consultant may enter into related to its operations and activities under this Agreement and that any such contract and other agreements shall specifically provide that "Miami-Dade County, Florida is a third party beneficiary of this and related provisions." This provision shall not constitute a waiver of any other conditions of this Agreement prohibiting or limiting assignments, subletting or subcontracting.

9.03 PERMITS AND LICENSES

The Consultant covenants, represents, and warrants that it shall, at its sole cost and expense, be strictly liable and responsible to obtain, pay for, maintain current, fully comply with, and make available to the Department upon request, all permits, licenses, and governmental authorizations and approvals, however designated and as may be required, at any time during the term of this Agreement, by any federal, state, or County governmental entity or judicial body having jurisdiction over the Consultant or its operations and activities, for any activity and for any actions of the Consultant at the Airport, including ensuring that all legal requirements, permits, and licenses necessary for or resulting, directly or indirectly, from the Consultant's operations and activities at the Airport have been obtained and are in compliance.

9.04 COMPLIANCE WITH ADDITIONAL RULES AND REGULATIONS

The Consultant acknowledges and accepts full responsibility for compliance with all applicable rules and regulations of the Transportation Security Administration ("TSA"), Federal Aviation Administration ("FAA"), and MDAD as set forth from time to time relating to Consultant's work at the Airport.

ARTICLE 10 – CIVIL ACTIONS**10.01 GOVERNING LAW; VENUE**

This Agreement shall be governed and construed in accordance with the laws of the State of Florida. Venue for any action or claim arising from this Agreement shall be in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, or in the United States District Court in and for the Southern District of Florida.

10.02 REGISTERED OFFICER/AGENT; JURISDICTION

The Consultant, if a corporation, shall designate a registered office and a registered agent, as required by Section 48.091, Florida Statutes, and such designations to be filed with the Florida Department of State in accordance with Section 607.034, Florida Statutes. If the Consultant is a natural person, both the Consultant and his or her personal representative(s) hereby submit themselves to the jurisdiction of the courts of the State of Florida for any cause of action based in whole or in part on the alleged breach of this Agreement.

10.03 VIOLATIONS OF LAWS AND REGULATIONS

The Consultant agrees to pay on behalf of the County any penalty, assessment, or fine, issued in the name of the County, or to defend in the name of the County any claim, assessment or civil action, which may be presented or initiated by any agency or officer of the federal, state or County governments, based in whole or substantial part upon a claim or allegation that the Consultant, its agents, Subconsultants, employees or invitees, have violated any law, statute, ordinance, resolution, regulation or rule described in this Agreement or any plan or program developed in compliance therewith.

ARTICLE 11 – TRUST AGREEMENT

Notwithstanding any of the terms, provisions and conditions of this Agreement, it is understood and agreed by the parties hereto that the provisions of the Amended and Reinstated Trust Agreement dated as of December 15, 2002, and approved by the Board of County Commissioners in Resolution No. R-1261-02 on November 19, 2002, securing Miami-Dade Aviation Facilities Revenue Bonds, shall prevail and govern in the event of any inconsistency with or ambiguity relating to the terms and conditions of this Agreement, including the rents, fees or charges required herein, and their modification or adjustment. Copies of the Trust Agreement may be examined by the Consultant at the offices of the Department during normal working hours.

ARTICLE 12 – SUBCONSULTANT RELATIONS

If the Consultant, with the written approval of the Department, causes any part of this Agreement to be performed by a Subconsultant, the provisions of this Agreement will apply to such Subconsultant and its officers, agents and employees in all respects as if it and they were employees of the Consultant; and the Consultant will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts and negligence of the Subconsultant, its officers, agents, and employees, as if they were employees of the Consultant. The services performed by the Subconsultant will be subject to the provisions hereof as if performed directly by the Consultant.

The Consultant, before making any subcontract for any portion of the services, will state in writing to the County the name of the proposed Subconsultant, the portion of the Services, which the Subconsultant is to do, the place of business of such Subconsultant,

and such other information as the County may require. The County will have the right to require the Consultant not to award any subcontract to a person, firm or corporation disapproved by the County.

Before entering into any subcontract hereunder, the Consultant will inform the Subconsultant fully and completely of all provisions and requirements of this Agreement relating either directly or indirectly to the Services to be performed. Such Services performed by such Subconsultant will strictly comply with the requirements of this Agreement.

In order to qualify as a Subconsultant satisfactory to the County, in addition to the other requirements herein provided, the Subconsultant must be prepared to prove to the satisfaction of the County that it has the necessary facilities, skill and experience, and ample financial resources to perform the Services in a satisfactory manner. To be considered skilled and experienced, the Subconsultant must show to the satisfaction of the County that it has satisfactorily performed services of the same general type which is required to be performed under this Agreement.

The County shall have the right to withdraw its consent to a subcontract if it appears to the County that the subcontract will delay, prevent, or otherwise impair the performance of Consultant's obligations under this Agreement. All Subconsultants are required to protect the confidentiality of the County's proprietary and confidential information. Consultant shall furnish to the County copies of all subcontracts between Consultant and Subconsultants and suppliers hereunder. Within each such subcontract, there shall be a clause for the benefit of the County permitting the County to request completion of performance by the Subconsultant of its obligations under the subcontract, in the event the County finds Consultant in breach of its obligations, the option to pay the Subconsultant directly for the performance by such Subconsultant. Notwithstanding, the foregoing shall neither convey nor imply any obligation or liability on the part of the County to any Subconsultant hereunder as more fully described herein.

ARTICLE 13 – DEFAULT AND TERMINATION

13.01 EVENTS OF DEFAULT

A default shall mean a breach of this Agreement by the Consultant (an "Event of Default"). In addition to those defaults defined in Sub-Article 13.02, an Event of Default, may also include one (1) or more of the following occurrences:

- (A) The Consultant has violated the terms and conditions of this Agreement;
- (B) the Consultant has failed to make prompt payment to Subconsultants or suppliers for any Service or Work provided pursuant to this Agreement;
- (C) the Consultant has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Consultant's creditors, or the Consultant has taken advantage of any insolvency statute or debtor/creditor law, or the Consultant's affairs have been put in the hands of a receiver;

- (D) the Consultant has failed to obtain the approval of the County where required by this Agreement;
- (E) the Consultant has failed in a representation or warranty stated herein; or
- (F) the Consultant has received three (3) notices of default, of any kind, within a twenty-four (24) month period.
- (G) the Consultant fails to timely deliver any Work or Services required under this Agreement;
- (H) the Consultant fails to deliver the Work or Services in a competent, professional manner and in the format requested by the County.

13.02 OTHER DEFAULTS

The County shall have the right, upon thirty (30) calendar days written notice to the Consultant to terminate this Agreement upon the occurrence of any one (1) or more of the following unless the same shall have been corrected within such period:

- (A) Failure of the Consultant to comply with covenants of this Agreement.
- (B) The conduct of any business or the performance of any service not specifically authorized herein.

13.03 NOTICE OF DEFAULT AND OPPORTUNITY TO CURE

If an Event of Default occurs, the Department shall notify the Consultant (the "Default Notice"), specifying the basis for such default, and advising the Consultant that such default must be cured immediately or this Agreement with the County may be terminated. The Consultant can cure and rectify the default, to the Department's reasonable satisfaction, within thirty (30) days of actual notice of the Default Notice (the "Cure Period") or such other timeframe as delineated in the Agreement. The Department may extend the Cure Period and grant an additional period of such duration as the Department shall deem appropriate without waiver of any of the County's rights hereunder, so long as, the Consultant has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) day period or any other period which the Department prescribes. The Default Notice shall specify the date by when the Consultant shall discontinue the services (the "Termination Date").

13.04 TERMINATION FOR CONVENIENCE

In addition to any other termination rights provided for in this Agreement, this Agreement may be terminated for convenience and without penalty by: (i) the mutual and written consent of both parties; (ii) upon not less than thirty (30) days written notice from the County to the Consultant; or (iii) upon not less than one hundred eighty (180) days written notice from the Consultant to the Department, provided however, in the event of the termination of this Agreement pursuant to this clause (iii), the Department, in its sole discretion, may require the Consultant to complete work on any Service Orders outstanding and issued by the Department prior to the date of receipt of the written termination notice. The County's sole obligation to the Consultant shall be payment for those units or sections of work previously authorized. Such payment shall be determined on the basis of the hours performed by the Consultant up to the Termination Date, plus

fees and any Reimbursable Expenses for Service Orders issued prior to the Termination Date that the Department requires the Consultant to complete. All payments pursuant to this Agreement shall be accepted by the Consultant in full accord and satisfaction of all claims against the County arising out of the termination including, without limitation, lost profits, overhead or other consequential damages.

13.05 TERMINATION FOR CAUSE

The County may terminate this Agreement, effective immediately if: (i) the Consultant fails to cure an Event of Default during the Cure Period; (ii) an individual, firm, corporation, joint venture, or other entity attempts to meet its contractual obligation(s) with the County through fraud, misrepresentation or material misstatement; (iii) a principal of the Consultant is convicted of a felony during the term of the Agreement; or (iv) if the Consultant is found to have submitted a false certification or to have been, or is subsequently during the term of this Agreement, placed on the Scrutinized Companies for Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

The County may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or joint venture or other entity has with the County and that such individual, corporation or joint venture or other entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees.

The foregoing notwithstanding, any individual, firm, corporation, joint venture, or other entity which attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement may be disbarred from County contracting for up to ten (10) years in accordance with the County debarment procedures. The Consultant may be subject to debarment for failure to perform, and all other reasons set forth in § 10-38 of the Code of Miami-Dade County, Florida (the "Code").

13.06 ACTIONS AT TERMINATION

The Consultant shall, upon receipt of such notice, and as directed by the Department:

- (A) stop all work on the Termination Date specified in the notice;
- (B) take such action as may be necessary for the protection and preservation of the Airport and other County materials and property.
- (C) promptly assemble and submit as provided herein all documents for the Services performed, including reports and correspondence, and all other relevant materials affected by the termination.

ARTICLE 14 – GENERAL PROVISIONS

14.01 ASSIGNMENT

The Consultant shall not assign, transfer, or convey this Agreement to any person, firm, association, joint venture, corporation, or other entity, in whole or in part without the prior written approval of the Department with such approval being in the Department's

sole discretion. However, the Consultant will be permitted to cause portions of the Services to be performed by Subconsultants, partnerships or joint ventures in an effort to meet disadvantaged business enterprise ("DBE") participation goals, or any other required participation, that is determined or permitted.

14.02 SOLICITATION

Except as provided by Section 2-11.1 (s) of the Code, the Consultant warrants: 1) that it has not employed or retained any company or person other than a bona fide employee working solely for the Consultant to solicit or secure this Agreement; and 2) that it has not paid, or agreed to pay any company or other person any fee, or commission, gift, or other consideration contingent upon the execution of this Agreement. A breach of this warranty makes this Agreement voidable by the County without liability to the Consultant for any reason whatsoever.

14.03 CONFLICT OF INTEREST

The Consultant agrees to adhere to and be governed by the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance (Section 2-11.1 of the Code). Notwithstanding the provisions of any federal, state or County law governing the activities of the hereunder, commencing as of the effective date of this Agreement and continuing for the term hereof, the Consultant shall not knowingly enter into any contract or other financial arrangement with any person, corporation, municipality, authority, county, state or country or any Consultant or airline at the Airport, which would constitute a conflict of interests of the County hereunder or with the services provided by the Consultant to the County hereunder. The Miami-Dade County Ethics Commission shall make determination(s), binding upon the parties, as to whether conflicts exist or will exist and if such will be serious enough to constitute a conflict hereunder.

The Consultant represents that no officer, director, employee, agent, or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the grant of this Agreement.

The Consultant also represents that, to the best of its actual knowledge:

- (a) There are no undisclosed persons or entities interested with the Consultant in this Agreement. This Agreement is entered into by the Consultant without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other Consultant of the County, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:
 - i) is interested on behalf of or through the Consultant directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the Services, supplies or Work, to which this Agreement relates or in any portion of the revenues; or
 - ii) is an employee, agent, advisor, or consultant to the Consultant or to the best of the Consultant's knowledge any subcontractor or supplier to the Consultant.

- (b) Neither the Consultant nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Consultant shall have an interest which is in conflict with the Consultant's faithful performance of its obligation under this Agreement; provided however, that the County, in its sole discretion, may consent in writing to such a relationship, provided the Consultant provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.
- (c) The provisions of this Sub-Article are supplemental to, not in lieu of, all applicable laws with respect to conflicts of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.
- (d) In the event the Consultant has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, the Consultant shall promptly bring such information to the attention of the Project Manager. Consultant shall thereafter cooperate with the County's review and investigation of such information, and comply with the instructions the Consultant receives from the Project Manager in regard to remedying the situation.

14.04 COMPLIANCE WITH APPLICABLE LAW

The Consultant shall comply with all applicable provisions of law pertaining to the Services required under this Agreement.

14.05 RIGHTS TO BE EXERCISED BY DEPARTMENT

Wherever in this Agreement rights are reserved to the County, the Department may exercise such rights. The Department shall have the right to add, amend or delete any security related portions of the Agreement, in order to meet reasonable security requirements of MDAD or TSA.

14.06 NOTICES

Any notices given under the provisions of this Agreement shall be in writing and shall be hand-delivered or sent by Registered or Certified Mail, Return Receipt Requested, or express mail service to:

To the County:
 Director,
 Miami-Dade Aviation Department
 P.O. Box 025504,
 Miami, Florida 33102-5504

To the Consultant:
 Mark Taylor
 LeighFisher Inc.
 555 Airport Blvd., Suite 300
 Burlingame, CA 94010

or to such other respective addresses as the parties may designate to each other in writing. Notices by Registered or Certified Mail shall be deemed given on the delivery date indicated on the Return Receipt from the United States Postal Service or on the express mail service receipt.

14.07 SEVERABILITY

If any provision of this Agreement or the application thereof to either party to this Agreement is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions of this Agreement, which can be given effect without the invalid provision, and to this end, the invalid provisions of this Agreement are severable.

14.08 RIGHTS RESERVED TO COUNTY

All rights not specifically granted to the Consultant by this Agreement are reserved to the County.

14.09 RIGHT TO REGULATE

Nothing in this Agreement shall be construed to waive or limit the governmental authority of the County, as a political subdivision of the State of Florida, to regulate the Consultant or its operations. Notwithstanding any provision of this Agreement, nothing herein shall bind or obligate the County, MDAD, the Community Zoning Appeals Boards, the Building Department, the Planning and Zoning Department, or any department, board, or agency of the County, to agree to any specific request of Consultant that relates in any way to the regulatory or quasi-judicial power of the County. The County shall be released and held harmless by Consultant from any liability, responsibility, claims, consequential damages or other damages, or losses resulting from the denial or withholding of such requests; provided, however, that this provision shall not preclude any appeal from County action wherein the sole remedy sought is reversal of the County's action or injunctive relief.

14.10 AUTHORIZED USES ONLY

Notwithstanding anything to the contrary herein, the Consultant shall not use or permit the use of the Airport for any illegal or unauthorized purpose or for any purpose, which would invalidate any insurance policies of the County, or any policies of insurance written on behalf of the Consultant under this Agreement.

14.11 SURVIVAL

Any obligations of the Consultant and the County which by their terms would continue beyond the termination, cancellation or expiration of this Agreement or any Service Order shall survive with such termination, cancellation or expiration.

14.12 NO DAMAGES FOR DELAY

The Consultant hereby: (i) agrees to make no claim(s) for damages for delay, whether contemplated or not contemplated, in the performance hereunder occasioned by any act(s) or omission(s) to act of the County, or any of its employees, agents, representatives, or other consultants or subconsultants; and (ii) agrees that any such

claim(s) shall be fully compensated for by an extension of time to complete performance of the Services.

14.13 ADMINISTRATIVE MODIFICATIONS

It is understood and agreed that the Department, upon written notice to the Consultant, shall have the right to modify administratively and to add, delete, and revise certain Articles and Exhibits to this Agreement pursuant to Sub-Article 14.05, Sub-Article 14.31, and Sub-Article 14.32, provided however that such revisions shall not have a materially adverse effect on either the right of Consultant to be reimbursed for costs and expenses incurred on a timely basis or to receive reasonable compensation for its services.

14.14 SUBSTITUTION OF PERSONNEL

In the event the Consultant wishes to substitute personnel for the key personnel identified by the Consultant's Qualification Statement, the Consultant must notify the Department in writing and request written approval for the substitution of personnel with equal or greater qualifications or capabilities to perform the services at least ten (10) business days prior to effecting such substitution.

14.15 MIAMI-DADE COUNTY INSPECTOR GENERAL REVIEWS

INDEPENDENT PRIVATE SECTOR INSPECTOR GENERAL REVIEW: Pursuant to Miami-Dade County Administrative Order No. 3-20 and in connection with any award, the Department has the right to retain the services of an Independent Private Sector Inspector General ("IPSIG"), whenever the Department deems it appropriate to do so. Upon written notice from the Department, the Consultant shall make available, to the IPSIG retained by the Department, all requested records and documentation pertaining to this Agreement or any subsequent award, for inspection and copying. The Department will be responsible for the payment of these IPSIG services, and under no circumstance shall the Consultant's cost/price for this Agreement be inclusive of any charges relating to these IPSIG services. The terms of this provision herein, apply to the Consultant, its officers, agents, employees and assignees. Nothing contained in this provision shall impair any independent right of the Department to conduct, audit or investigate the operations, activities and performance of the Consultant in connection with this Agreement. The terms of this provision are neither intended nor shall they be construed to impose any liability on the Department by the Consultant or third party.

MIAMI-DADE COUNTY INSPECTOR GENERAL REVIEW: According to Section 2-1076 of the Code of Miami-Dade County, Miami-Dade County has established the Office of the Inspector General ("IG") which may, on a random basis, perform audits on all Department contracts, throughout the duration of said contracts, except as otherwise provided below. The cost of the audit of any contract will be one quarter of one percent (0.25%) of the total contract amount. An IG Audit Account will be established within this Agreement to pay for Inspector General services, (see Sub-Article 14.16). The audit cost shall also be included in all change orders and all contract renewals and extensions.

Exception: The above application of one quarter of one percent (0.25%) fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (i) contracts where an IPSIG is assigned at the time the contract is approved by the Board; (j) professional service agreements under \$1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order No. 3-38; (m) federal, state and local government-funded grants; and (n) interlocal agreements. *Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter of one percent (0.25%) in any exempted contract at the time of award.*

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all Department contracts including, but not limited to, those contracts specifically exempted above.

14.16 ACCOUNT TO PAY FOR IG SERVICES

An Audit Account is hereby established to pay for mandatory random audits by the County's Inspector General. The amount for the Inspector General Audit Account is hereby set at **\$15,000.00**. The Consultant shall have no entitlement to any of these funds. The County retains all rights to these funds, may expend these funds at its sole discretion, and any funds not expended from this audit account remain the property of the County.

14.17 MISCELLANEOUS AUDIT PROVISIONS

Nothing herein shall limit the right of the Consultant to contest any action by the Inspector General on any legal or equitable ground. Nothing in this contract shall impair any independent right of the County to conduct audit or investigative activities. The provisions of this Sub-Article are neither intended nor shall they be construed to impose any liability on the County by the Consultant or third parties.

The County shall be responsible for the payment of the Inspector General services and for the payment of costs of Consultant related to actions by the Office of the Inspector General for clerical staff time for obtaining and copying the documentation, and any documents, provided however, the Consultant shall pay for all audit-related expenses where the audit findings aggregate to greater than or equal to three percent (3%) of the correct amount the County should have paid or been invoiced. The three percent (3%) audit-related expense threshold only applies to the amount(s) audited, and not all of the Consultant's billings. Any overpayment amount(s) discovered by audit shall be reimbursed to the County within fifteen (15) day of notice of the audit results to the Consultant. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or to review the operations, activities and performance of the Consultant as and to the extent as provided under this Agreement.

14.18 TRADEMARKS AND LICENSES

The County may require the Consultant as part of its advertising and marketing program, to utilize certain patents, copyrights, trademarks, trade names, logos, computer software and other intellectual property owned by the County in the performance of this Agreement, which patents, copyrights, trademarks, trade names, logos, computer software and intellectual property may have been created pursuant to the terms of this Agreement. Such permission, when granted, shall be evidenced by a nonexclusive license executed by the Consultant and the Department, on behalf of the County, granting the Consultant the right, license and privilege to use a specific patent, copyright, trademark, trade name, logo, computer software or other intellectual property without requiring payment of fees therefore. Failure of the parties to execute a formal license agreement shall not vest title or interest in such patent, copyright, trademark, trade name, logo, computer software or intellectual property in the Consultant.

14.19 PROPRIETARY RIGHTS

Consultant warrants that the software, products nor any of its elements nor use thereof supplied under this Contract does or will not infringe upon or violate any patent, copyright, trade secret or any other proprietary right of any their party; in the event of any claim by any third party against County, County shall promptly notify Consultant and Consultant shall defend such claim, in County name, but at Consultant's expense and shall indemnify County against any loss, cost, expense (including reasonable attorney fees), or liability arising out of such claim, whether or not such claim is successful. County shall withhold payment of any sums otherwise required to be paid hereunder.

14.20 HEADINGS

The headings of the various articles and sections of this Agreement, and its Table of Contents, are for convenience and ease of reference only, and shall not be construed to define, limit, augment or describe the scope, context or intent of this Agreement or any part or parts of this Agreement.

14.21 BINDING EFFECT

The terms, conditions and covenants of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors and assigns. This provision shall not constitute a waiver of any conditions prohibiting assignment or subletting.

14.22 FEDERAL SUBORDINATION

This Agreement shall be subordinate to the provisions of any existing or future agreements between the County and the United States of America relative to the operation and maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport. All provisions of this Agreement shall be subordinate to the right of the United States of America to lease or otherwise assume control over the Airport, or any part thereof, during time of war or national emergency for military or naval use and any provisions of this Agreement inconsistent with the provisions of such lease to the United States of America shall be suspended.

14.23 GOVERNMENTAL AUTHORITY

Nothing in this Agreement shall be construed to waive or limit the governmental authority of the County, as a political subdivision of the State of Florida, to regulate the Lessee or its operations.

14.24 NO ESTOPPEL OR WAIVER

No acceptance, order, measurement, payment, or certificate of or by a party or its employees or agents shall estop the other party from asserting any right of the ensuing Agreement. There shall be no waiver of the right of a party to demand strict performance of any of the provisions, terms and covenants of this Agreement, nor shall there be any waiver of any breach, default or non-performance hereof by the other party unless such waiver is explicitly made in writing by the party. No delay or failure to exercise a right under the ensuing Agreement shall impair such right or shall be construed to be a waiver thereof. Any waiver shall be limited to the particular right so waived and shall not be deemed a waiver of the same right at a later time, or of any other right under this Agreement.

14.25 INDEPENDENT CONTRACTOR

The Consultant shall perform all services described herein as an independent contractor and not as an officer, agent, servant, or employee of the County. All personnel provided by the Consultant in the performance of this Agreement shall be considered to be, at all times, the sole employees of the Consultant under its sole discretion, and not employees or agents of the County.

14.26 EMPLOYMENT ELIGIBILITY VERIFICATION (E-VERIFY):

Consultant is required to enroll in the United States Citizenship and Immigration Services E-Verify system, and to utilize that system to verify the employment eligibility of all persons performing work for the Consultant under this Agreement. Consultant shall incorporate this requirement into all of its subcontracts as well.

14.27 FIRST SOURCE HIRING REFERRAL PROGRAM ("FSHRP")

Pursuant to Section 2-2113 of the Code of Miami-Dade County, for all contracts for goods and services, the successful Bidder, prior to hiring to fill each vacancy arising under a County contract shall (1) first notify the South Florida Workforce Investment Board ("SFWIB"), the designated Referral Agency, of the vacancy and list the vacancy with SFWIB according to the Code, and (2) make good faith efforts as determined by the County to fill a minimum of fifty percent (50%) of its employment needs under the County contract through the SFWIB. If no suitable candidates can be employed after a Referral Period of three to five days, the successful Bidder is free to fill its vacancies from other sources. Successful Bidders will be required to provide quarterly reports to the SFWIB indicating the name and number of employees hired in the previous quarter, or why referred candidates were rejected. Sanctions for non-compliance shall include, but not be limited to: (i) suspension of contract until Contractor performs obligations, if appropriate; (ii) default and/or termination; and (iii) payment of \$1,500/employee, or the

value of the wages that would have been earned given the noncompliance, whichever is less.. Registration procedures and additional information regarding the FSHRP are available at <https://iapps.southfloridaworkforce.com/firstsource/> or by contacting the SFWIB at (305) 594-7615, Extension 407. (Refer to Exhibit 6)

14.28 REQUEST FOR QUALIFICATIONS INCORPORATED AND ORDER OF PREFERENCE

The Consultant acknowledges that it has submitted to the County a Proposal that was the basis for the award of this Agreement and upon which the County has relied. MDAD RFQ No. MDAD-14-01, addenda, and concomitant documents are incorporated by reference into this Agreement. IN THE EVENT A CONFLICT EXISTS BETWEEN THE RFQ DOCUMENTS AND THIS AGREEMENT, SAID CONFLICT SHALL BE RESOLVED IN THE FOLLOWING PRIORITY: (1) THE TERMS OF THIS AGREEMENT; (2) EXHIBITS TO THE AGREEMENT; (3) ANY RFQ ADDENDA; AND (4) THE RFQ AND CONCOMITANT DOCUMENTS.

If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows: 1) the Service Order, 2) the Scope of Services in the Agreement, and 3) these terms and conditions other than the Scope of Services.

14.29 MODIFICATIONS

This Agreement may be modified and revised by written amendment duly executed by the parties hereto. Neither electronic mail nor instant messaging shall be considered a "writing" sufficient to change, modify, extend or otherwise affect the terms of the Agreement. Any oral representation or modifications concerning this Agreement shall be of no force or effect.

14.30 PRIOR AGREEMENTS

The parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written. No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless set forth in writing in accordance with this Agreement.

14.31 RIGHT TO AMEND

In the event that the FAA or its successor requires modifications or changes in this Agreement as a condition precedent to the granting of its approval or to the obtaining of funds for improvements at the Airport, the Consultant hereby consents to any and all such modifications and changes as may be reasonably required.

14.32 RIGHT TO MODIFY

The parties hereto covenant and agree that, during the Agreement term, this Agreement may be unilaterally modified by the Department in order to conform to judicial or Federal Trade Commission ("FTC") or FAA rulings or opinions. This Sub-Article shall not

preclude Consultant from contesting said rulings or opinions, but Consultant shall abide by the unilateral change while such a challenge is pending. Except as otherwise specifically provided in this Agreement, this Agreement may not be modified except by a written instrument signed by both parties.

14.33 INTENT OF AGREEMENT

This Agreement is for the benefit of the parties only and does not: (a) grant rights to third party beneficiaries, or to any person; or (b) authorize non-parties to the Agreement to maintain a suit for personal injuries, professional liability, or property damage pursuant to the terms or provisions of the Agreement.

Neither the Consultant nor the County intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement, and that no third party shall be entitled to assert a claim against either of the parties based upon this Agreement. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third party or entity under this Agreement.

14.34 ENTIRETY OF AGREEMENT

The parties hereto agree that this Agreement sets forth the entire agreement between the parties, and there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except as may be specifically authorized by Sub-Article 14.29 and Sub-Article 14.30 to the Agreement, or by written instrument executed by the parties hereto.

14.35 TOTAL AUTHORIZED AMOUNT FOR THIS AGREEMENT

Except as otherwise provided for herein, the Total Authorized Amount, including the IG Audit Account, for this Agreement is \$6,015,000.00.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their appropriate officials as of the date first above written.

BOARD OF COUNTY COMMISSIONERS
OF MIAMI-DADE COUNTY, FLORIDA

By: _____
Mayor

Attest: Harvey Ruvin, Clerk

(COUNTY SEAL)

By: _____
Deputy Clerk

Approved for Form
and Legal Sufficiency

Assistant County Attorney

Consultant (If an Individual)

Name: _____

By: _____
Signature

Title: _____

Consultant (If a Corporation)
LEIGHFISHER INC.

Name: Mark Taylor
President

By: [Signature]
Signature

MARK TAYLOR
Print Name

(Corp. Seal)

Attest: [Signature]
Secretary

MARK DOND
Print Name

Consultant (If a L.L.C.):

Name of L.L.C.
A Florida member-managed limited liability company

By: _____
Signature of Member

Witness

(Print Name of Member)